

IC 15-5-13

Chapter 13. Commercial Feed

IC 15-5-13-1

Definitions

Sec. 1. As used in this chapter unless otherwise provided:

(1) The term "brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(2) The term "commercial feed" means all materials that are distributed for use as feed or for mixing in feed. The term does not include the following unless adulterated within the meaning of section 9(1) of this chapter:

(A) Unmixed whole seeds.

(B) Physically altered entire seed unmixed seeds, when such physically altered whole seeds are not chemically changed.

(C) Commodities, compounds, or substances excluded by rules adopted under IC 4-22-2.

(3) The term "custom-mixed feed" means commercial feed which consists of a mixture of commercial feeds or feed ingredients each batch of which is mixed to meet the request of the final purchaser that the mixture contain a specific content of ingredients, nutrients, or nonnutritive additives.

(4) The term "director" means the state chemist.

(5) The term "distribute" means to offer for sale, sell, exchange, barter, or otherwise supply a commercial feed.

(6) The term "distributor" means any person who distributes.

(7) The term "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

(8) The term "feed ingredient" means each of the constituent materials making up a commercial feed.

(9) The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(10) The term "labeling" means all labels and other written, printed, or graphic matter:

(A) upon a commercial feed or any of its containers or wrapper;
or

(B) accompanying such commercial feed.

(11) The term "manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

(12) The term "mineral feed" means a commercial feed, the primary purpose of which is to supply mineral elements and inorganic nutrients.

(13) The term "official sample" means a sample of feed taken by the director or his agent in accordance with section 15(c), 15(e), or 15(f) of this chapter.

(14) The term "percent" or "percentage" means percentage by weight.

(15) The term "person" includes individual, partnership, limited liability company, corporation, and association.

(16) The term "pet" means any domesticated animal normally maintained in or near the household of the owner thereof.

(17) The term "pet food" means any commercial feed prepared and distributed for consumption by dogs and cats.

(18) The term "product name" means the name of the commercial feed which identifies it as to kind, class or specific use.

(19) "Specialty pet" means a domesticated animal normally maintained in a cage or tank, such as a gerbil, hamster, bird, fish, or turtle.

(20) "Specialty pet food" means a commercial feed prepared and distributed for consumption by specialty pets.

(21) The term "ton" means a net weight of two thousand pounds avoirdupois.

(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by P.L.140-1991, SEC.1; P.L.40-1993, SEC.38; P.L.8-1993, SEC.239.

IC 15-5-13-2

Administration of chapter

Sec. 2. This chapter shall be administered by the director.

(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by P.L.40-1993, SEC.39.

IC 15-5-13-3

Repealed

(Repealed by P.L.140-1991, SEC.11.)

IC 15-5-13-3.5

Distributors; commercial feed licenses

Sec. 3.5. (a) A person who manufactures a commercial feed or whose name appears on the label of a commercial feed may not distribute the commercial feed in Indiana without a commercial feed license issued by the director on a form provided by the director.

(b) An out-of-state distributor may not cause a commercial feed to be distributed in Indiana without a commercial feed license issued by the director on a form provided by the director.

(c) A commercial feed license is issued for the calendar year and expires December 31 of the year for which the license was issued. Commercial feed license fees are as follows:

(1) The filing fee for a new or renewal license is fifty dollars (\$50).

(2) A late filing fee of fifty dollars (\$50) shall be added to the filing fee for renewing a commercial feed license if the application for renewal is received after January 16.

(d) The form and content of commercial feed license applications shall be established by rules adopted under IC 4-22-2.

As added by P.L.140-1991, SEC.2.

IC 15-5-13-4

Repealed

(Repealed by P.L.140-1991, SEC.11.)

IC 15-5-13-5

Refusal or cancellation of commercial feed license

Sec. 5. The director may refuse an application for a commercial feed license that is not in compliance with the provisions of this chapter and may cancel a commercial feed license found not to be in compliance with any provision of this chapter. However, a commercial feed license may not be refused or canceled unless the licensee has been given an opportunity to be heard before the director and to amend his application in order to comply with the requirements of this chapter. *(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by P.L.183-1983, SEC.114; P.L.140-1991, SEC.3.*

IC 15-5-13-6

Feed labels; contents

Sec. 6. A commercial feed, except a custom-mixed feed, shall be accompanied by a label bearing the following information:

- (1) The net weight.
- (2) The product name and the brand name, if any, under which the commercial feed is distributed.
- (3) The guaranteed analysis stated in such terms as the director by regulation determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the Association of Official Analytical Chemists.
- (4) The common or usual name of each ingredient used in the manufacture of the commercial feed: Provided, That the director by regulation may (i) permit the use of a collective term for a group of ingredients which perform a similar function, or (ii) exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if he finds that such statement is not required in the interest of consumers.
- (5) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.
- (6) Adequate directions for use for all commercial feeds containing drugs and such other feeds as the director may require by regulation as necessary for their safe and effective use.
- (7) Such precautionary statements as the director by regulation determines are necessary for the safe and effective use of the commercial feed.

(Formerly: Acts 1971, P.L.200, SEC.1.)

IC 15-5-13-7

Custom-mixed feed labels; contents

Sec. 7. Custom-mixed feed shall be accompanied by a label, invoice, delivery slip, or other shipping document bearing the following information:

- (1) Name and address of the manufacturer.
- (2) Name and address of the purchaser.

(3) Date of delivery.

(4) The product name and brand name, if any, and the net weight of each registered commercial feed used in the mixture, and the common or usual name and net weight of each other ingredient used, and the specific content, stated in terms as required in section 6 of this chapter, of any nutrients and nonnutritive additives added at the request of the purchaser.

(5) Adequate directions for use for all custom-mixed feeds containing drugs and for such other feeds as the director may require by regulation as necessary for their safe and effective use.

(6) Such precautionary statements as the director by regulation determines are necessary for the safe and effective use of the custom-mixed feed.

(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by P.L.3-1990, SEC.61.

IC 15-5-13-8

Misbranding of commercial feed

Sec. 8. A commercial feed shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If it is distributed under the name of another commercial feed.

(3) If it is not labeled as required in IC 1971, 15-5-13-6 or 7.

(4) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the director.

(5) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(Formerly: Acts 1971, P.L.200, SEC.1.)

IC 15-5-13-9

Adulteration of commercial feed

Sec. 9. A commercial feed shall be deemed to be adulterated as follows:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health. But in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subdivision if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health.

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act other than one which is:

(A) a pesticide chemical in or on a raw agricultural commodity; or

(B) a food additive.

(3) If it is or it bears or contains any food additive which is unsafe

within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act.

(4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act. Where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act.

(5) If it is or it bears or contains any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug, and Cosmetic Act.

(6) If it is, bears, or contains an animal drug that is unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act.

(7) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(8) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

(9) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the director to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the director shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the Federal Food, Drug, and Cosmetic Act, unless he determines that they are not appropriate to the conditions which exist in this state.

(10) If it contains viable weed seeds in amounts exceeding the limits which the director shall establish by rule or regulation.

(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by P.L.140-1991, SEC.4.

IC 15-5-13-10

Prohibited acts

Sec. 10. A person commits a Class C infraction if he knowingly engages in any of the following:

(1) The manufacture or distribution of any commercial feed that

is adulterated or misbranded.

(2) The adulteration or misbranding of any commercial feed.

(3) The distribution of agricultural commodities, such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of section 9(1) of this chapter.

(4) The removal or disposal of a commercial feed in violation of an order under section 16 or 17 of this chapter.

(5) The failure to obtain a commercial feed license under section 3.5 of this chapter.

(6) The failure to pay inspection fees or file reports as required by section 11 or 12 of this chapter.

(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by Acts 1978, P.L.2, SEC.1542; P.L.140-1991, SEC.5.

IC 15-5-13-11

Inspection fee

Sec. 11. (a) An inspection fee at the rate of forty cents (\$0.40) per ton shall be paid to the director by the distributor on all commercial feeds shipped into or in this state subject to the following:

(1) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.

(2) No fee shall be paid on a custom-mixed feed if the inspection fee has been paid on all of the commercial feeds that are ingredients of the custom-mixed feed.

(3) On commercial feeds that contain ingredients on which the inspection fee has already been paid, credit shall be given for such payment.

(4) The minimum inspection fee shall be five dollars (\$5) per quarter if a quarterly feed tonnage report is required under section 12 of this chapter.

(b) In the case of a pet food or a specialty pet food which is distributed in the state in packages of ten (10) pounds or less, an annual inspection fee of fifty dollars (\$50) shall be paid in lieu of the tonnage inspection fee specified in subsection (a).

(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by Acts 1981, P.L.164, SEC.1; P.L.140-1991, SEC.6.

IC 15-5-13-12

Quarterly tonnage reports; inspection fees; late payment; records

Sec. 12. (a) Except as provided in subsection (b), a distributor who is liable for the payment of the tonnage inspection fee under section 11 of this chapter shall file, not later than January 31, April 30, July 31, and October 31, of each year, a quarterly tonnage report setting forth the number of net tons of commercial feeds distributed in this state during the preceding calendar quarter and upon filing such report shall pay the inspection fee at the rate stated in section 11 of this chapter. Inspection fees which are due and owing and have not been remitted to the director within fifteen (15) days following the due date shall have a penalty fee of ten percent (10%) of the amount due, or fifty dollars (\$50), whichever is greater, added to the amount due when payment is

finally made. The assessment of this penalty fee shall not prevent the director from taking other actions as provided in this chapter.

(b) A resident of Indiana who only manufactures and distributes custom-mixed commercial feeds and has met the requirements of section 11 of this chapter is exempt from filing quarterly feed tonnage reports.

(c) A distributor who is subject to the inspection fees for small packaged pet and specialty pet foods distributed in containers of ten (10) pounds or less under section 11 of this chapter shall do the following:

(1) Before beginning distribution, file with the director a listing of small packaged pet and specialty pet foods to be distributed in Indiana in containers of ten (10) pounds or less, on forms provided by the director. The listing under this subdivision shall be renewed annually before January 1 of each year and is the basis for the payment of the annual inspection fee of fifty dollars (\$50) per product. New products added during the year must be submitted to the director as a supplement to the annual listing before distribution.

(2) If the annual renewal of the listing is not received before January 16 or if an unlisted product is distributed, pay a late filing fee of ten dollars (\$10) per product in addition to the normal charge for the listing. The late filing fee under this subdivision is in addition to any other penalty under this chapter.

(d) Each person required to pay an inspection fee or to report under this chapter shall keep such records as may be necessary or required by the director to indicate accurately the tonnage of commercial feed or the number of small packaged pet and specialty pet products distributed in this state. The director or the director's agent may examine such records to verify statements of tonnage.

(e) Failure to:

- (1) make an accurate statement of tonnage;
- (2) make an accurate listing of small packaged pet or specialty pet products;
- (3) pay the inspection fee; or
- (4) accurately report any of the information required to be submitted under this chapter;

is sufficient cause to cancel the commercial feed license of the person who fails to act or falsifies information under this subsection.

(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by P.L.140-1991, SEC.7.

IC 15-5-13-13

Disposition of fees

Sec. 13. All fees collected by the director under this chapter shall be receipted into the treasurer of Purdue University. The Board of trustees of Purdue University shall expend the same on proper vouchers in meeting all necessary expenses in carrying out the provisions of this chapter, including the employment of inspectors, chemists, expenses of the work of feed inspection as provided for by this chapter, and for any other expenses of Purdue University agricultural programs

authorized by law and in support of the purposes of this chapter.
(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by Acts 1979,
P.L.17, SEC.22; P.L.40-1993, SEC.40.

IC 15-5-13-14

Rules and regulations

Sec. 14. (a) The director is authorized to promulgate such rules and regulations for commercial feeds and pet foods as are specifically authorized in this chapter and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this chapter. Such rules and regulations shall be promulgated in accordance with the provisions of IC 4-22-2 as the same may be hereafter amended. In the interest of uniformity the director shall by regulation adopt, unless he determines that they are inconsistent with the provisions of this chapter or are not appropriate to conditions which exist in this state, the following:

(1) The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization.

(2) Any regulation promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 301 et seq.) if the director would have the authority under this chapter to promulgate such regulations.

(b) The director may adopt rules under IC 4-22-2 to exclude from the definition of "commercial feed" commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when the commodities, compounds, or substances are not intermixed or mixed with other materials.

(c) The director may adopt rules under IC 4-22-2 to require copies of labels and labeling.

(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by P.L.140-1991, SEC.8.

IC 15-5-13-15

Inspection of factories, warehouses, or establishments; notice of inspection; warrants; sampling and analysis

Sec. 15. (a) For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the director, upon presenting appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized:

(1) to enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held for distribution or to enter any vehicle being used to transport or hold such feeds; and

(2) to inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished

materials, containers, and labeling therein.

In determining compliance with the good manufacturing practice regulations established under section 9(9) of this chapter, the inspection may include the verification of only such records and production and control procedures as may be necessary to determine compliance with these regulations.

(b) A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(c) If the officer or employee making such inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

(d) If the owner of any factory, warehouse, or establishment described in subsection (a), or his agent, refuses to admit the director or his agent to inspect in accordance with subsections (a) and (b), the director is authorized to obtain from any state court a warrant directing such owner or his agent to submit the premises described in such warrant to inspection.

(e) For the purpose of the enforcement of this chapter, the director or his duly designated agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

(f) Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists, or in accordance with other generally recognized methods.

(g) The results of all analyses of official samples shall be forwarded by the director to the person named on the label and to the person in whose possession the sample was taken. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty (30) days following receipt of the analysis the director shall furnish to the registrant a portion of the sample concerned.

(h) The director, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample (as defined in section 1(13) of this chapter) and obtained and analyzed as provided for in subsections (c), (e), and (f). *(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by P.L.140-1991, SEC.9.*

IC 15-5-13-16

"Stop sale or withdrawal from distribution" order

Sec. 16. When the director or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the prescribed regulations under this chapter, he may issue and enforce a

written or printed "stop sale or withdrawal from distribution" order, warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the director or the court. The director shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty (30) days, the director may begin, or upon request of the distributor or licensee shall begin, proceedings for condemnation.

(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by P.L.140-1991, SEC.10.

IC 15-5-13-17

Seizure of commercial feed on complaint of director; court procedure

Sec. 17. Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this chapter and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. However, in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this chapter.

(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by P.L.183-1983, SEC.115.

IC 15-5-13-18

Hindering performance of duty

Sec. 18. A person who impedes, hinders, or otherwise prevents the director or his authorized agent in performance of his duty in connection with this chapter commits a Class C infraction.

(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by Acts 1978, P.L.2, SEC.1543.

IC 15-5-13-19

Discretion of director or representative regarding certain penalties

Sec. 19. Nothing in this chapter shall be construed as requiring the director or his representative to: (1) report for prosecution, or (2) institute seizure proceedings, or (3) issue a withdrawal from distribution order, as a result of minor violations of the chapter, when he believes the public interest will best be served by suitable notice of warning in writing.

(Formerly: Acts 1971, P.L.200, SEC.1.)

IC 15-5-13-20

Prosecuting attorneys; duties

Sec. 20. It shall be the duty of each prosecuting attorney to whom any violation is reported to consider the institution and prosecution of appropriate proceedings in a court of competent jurisdiction without delay. Before the director reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the director.

(Formerly: Acts 1971, P.L.200, SEC.1.)

IC 15-5-13-21

Temporary or permanent injunction

Sec. 21. The director is hereby authorized to apply for and the appropriate court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction may be issued without bond.

(Formerly: Acts 1971, P.L.200, SEC.1.)

IC 15-5-13-22

Judicial review

Sec. 22. Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this chapter, other than the penalty provisions thereof, may within forty-five (45) days thereafter bring action in a court of competent jurisdiction for judicial review of such actions. The form of proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies, or in the absence or inadequacy thereof, any applicable form or legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

(Formerly: Acts 1971, P.L.200, SEC.1.)

IC 15-5-13-23

Confidential information; disclosure; violation

Sec. 23. A person who recklessly uses to his own advantage, or recklessly reveals to other than the director or officers of the director or to the courts when relevant in any judicial proceeding, any information, acquired under the authority of this chapter, concerning any method, records, formulations, or processes entitled as a trade secret to protection commits a Class B misdemeanor; but this does not prohibit the director, or his authorized agent, from exchanging information of a regulatory nature with officials of the United States Government, or of other states, who are also prohibited by law from revealing such information.

(Formerly: Acts 1971, P.L.200, SEC.1.) As amended by Acts 1978, P.L.2, SEC.1544.

IC 15-5-13-24

Cooperation with state, federal, or private agencies

Sec. 24. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the

purpose and provisions of this chapter.
(Formerly: Acts 1971, P.L.200, SEC.1.)

IC 15-5-13-25

Publication and distribution of information on commercial feed

Sec. 25. The director shall publish at least annually, in such forms as he may deem proper, information concerning the distribution of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds distributed within the state: Provided, That the information concerning production and use of commercial feed shall not disclose the operations of any person.

(Formerly: Acts 1971, P.L.200, SEC.1.)